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Docket Number: M-23-2791

March 22, 2023

Appeal Information**Appellant name**

Dr. Richard Cordero, Esq.

Appellant type

BENEFICIARY

Appellant representative**ALJ appeal number**

M-23-386

ALJ decision date**Medicare contractor****Claim type**

Part B

Service type

Other - Part B

Case involving an overpayment?

No

Overpayment**Amount in controversy**

\$8,500

Date or period of service start

09/08/2021

Date or period of service end

03/13/2023

Dear Officers of the Medicare Appeals Council,

The whole of the Supplemental Brief hereunder, comprising 34 pages, not just its Table of Contents, was faxed to fax # (202)565-0227 on or around Wednesday, 15 March 2023. It was accompanied by these two official "Appeal Information" pages acknowledging receipt of my e-filing it.

Sincerely,

Dr. Richard Cordero, Esq.

tel. (718)827-9521

Dr.Richard.Cordero_Esq@verizon.net

#	Document Name	Uploaded By	Date Uploaded
1	23-3-11DrRCordero_supp_brief-Medicare_Appeals... [3 MB] Request for Review (Form DAB-101)	Dr. Richard Cordero, Esq.	03/13/2023 08:19 am
2	22-8-24_ALJ_Fleming_decision.pdf [65 KB] Copy of ALJ Decision/Dismissal Order	Dr. Richard Cordero, Esq.	03/13/2023 08:24 am
3	22-10-26DrRCordero-Medicare_Appeals_Council.p... [1 MB] Memorandum or brief or other written statement in support of your appeal	Dr. Richard Cordero, Esq.	03/13/2023 08:27 am

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4	DrRCordero_OMHA_Council_emails.pdf [948 KB] Other	Dr. Richard Cordero, Esq.	03/13/2023 08:33 am
5	23-3-13_Supp_brief_submission_Receipt.pdf [134 KB] Other	Dr. Richard Cordero, Esq.	03/13/2023 08:34 am

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March 11, 2023

SUPPLEMENTAL BRIEF

filed with the Medicare Appeals Council, docket # M-23-2791,
by appellant Dr. Richard Cordero, Esq., on March 13, 2023
in
Appeal to the Medicare Appeals Council, docket # M-23-386,
from Medicare ALJ hearing # 3-1081 7205 455
filed by Dr. Richard Cordero, Esq., on October 28, 2022

ECAPE Id. # E1021112

Appellant's Medicare Id. # 8G24-KQ8-WV67

Appellant's EmblemHealth Id. # K405 191 5001

Health Insurance Plan of Greater New York (HIP) =
EmblemHealth cases # 1063 8576, et al.

Dr. Richard Cordero, Esq.
Appellant

v.

Health Insurance Plan of
Greater New York=EmblemHealth;
and Maximus Federal Services
Appellees

**Appellant's Supplemental Brief¹
requesting
production of withheld evidentiary materials
and
corresponding deferred action by the Council**

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¹ This brief and its supporting exhibits can be retrieved through the link in the footer below.

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A. The foundation for this Supplemental Brief: Council Branch Chief David Eng’s CD of 15 February 2023

1. Mr. David Eng (hereinafter Mr. Eng)
Branch Chief, Program Operations
tel. (202)565-0100; fax 202-565-0227

Departmental Appeals Board, MS 6127
Medicare Appeals Council (the Council)
330 Independence Avenue
Cohen Building, Room G-644
Washington, DC 20201
tel. (202)565-0100; toll free: (866)365-8204

sent appellant Dr. Richard Cordero, Esq., (Dr. Cordero) two letters dated February 15, 2023 ([Exhibits:83-85 below](#)), which he received on February 21 and which are attached hereto^{above} as exhibits. In one of them, Mr. Eng pretends that:

Pursuant to your request, enclosed please find a compact disc (CD) containing a copy of the administrative record, including the documentary exhibits and a recording of the ALJ [Administrative Law Judge] hearing”.[italics added]...

The Council also grants you an extension of time to review the record and submit a supplemental brief. The Council will defer action for a period of 30 days from the date of this letter.

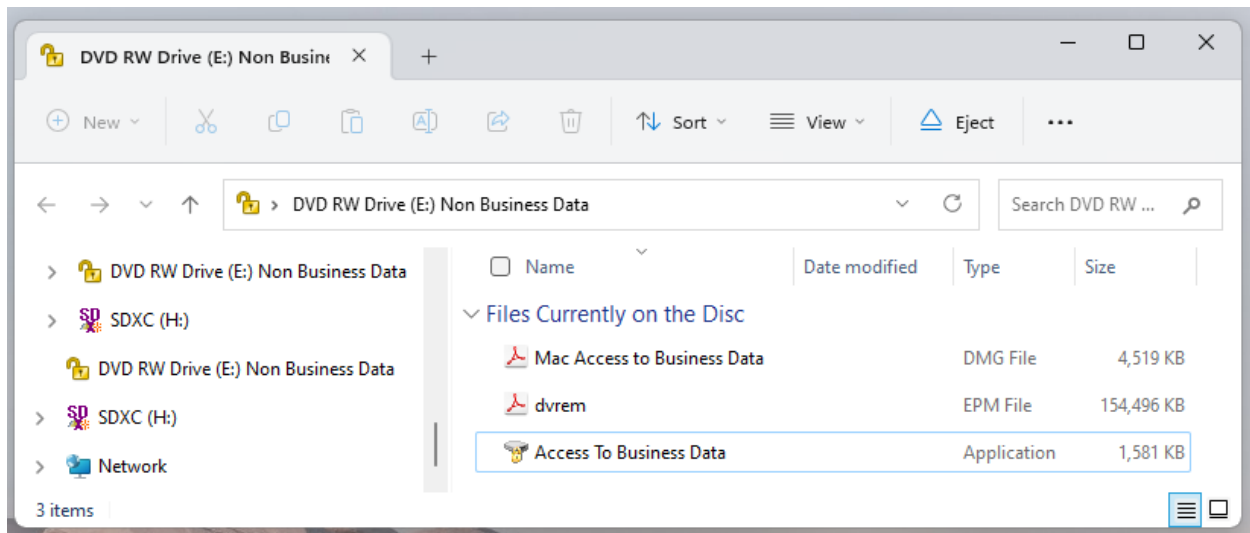
You may send your submissions to the above address or by fax to 202-565-0227.

B. The pretense of providing “the requested administrative record” and assistance

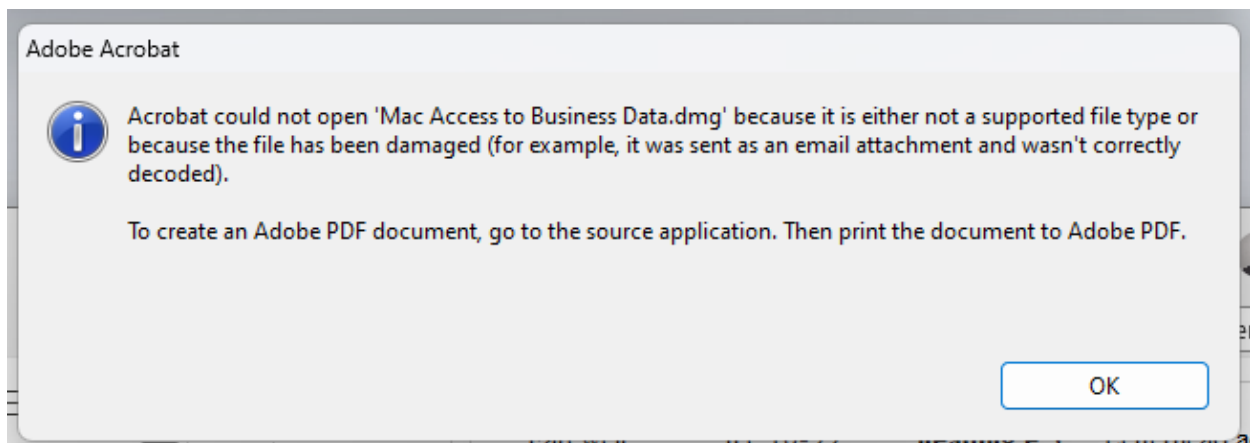
2. The word ‘pretend’ is warranted by the conduct of Mr. Eng. On his CD of 15 February 2023, he did not send Dr. Cordero the evidentiary materials that the latter has been repeatedly requesting for more than a year, as shown next.

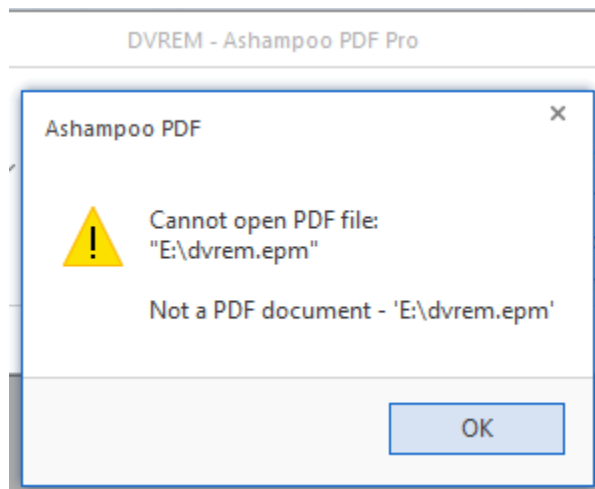
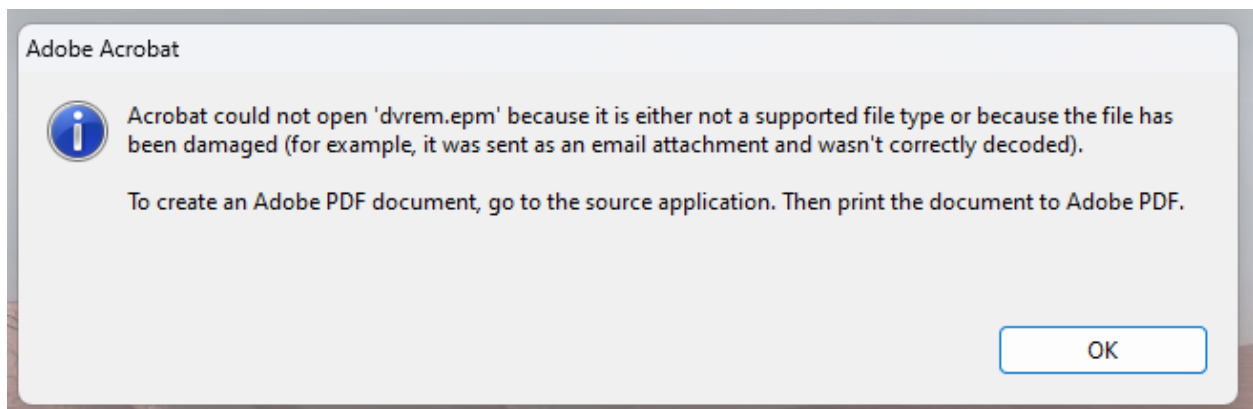
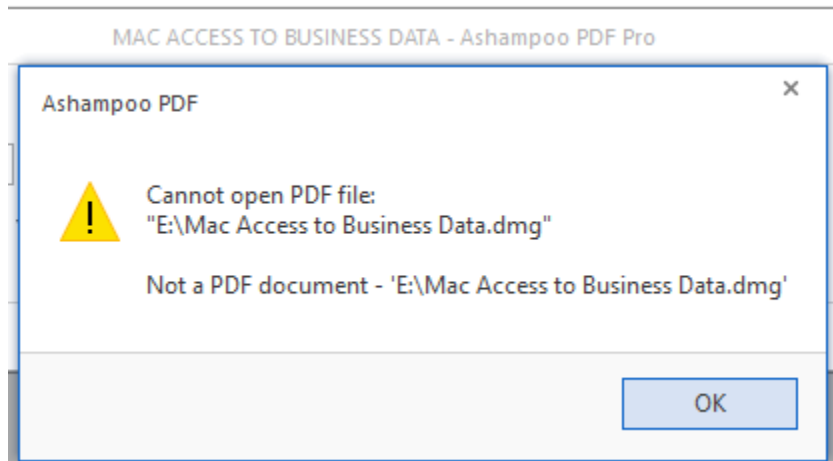
1. Two of the three folders on the CD do not open

3. Of the three files on the CD, two cannot be opened because they bear esoteric extensions, i.e., .dmg and .epm. This explains why neither Acrobat nor another similar application, Ashampoo PDF, can open them: They are not even .pdf files. And neither are they Microsoft Office files.



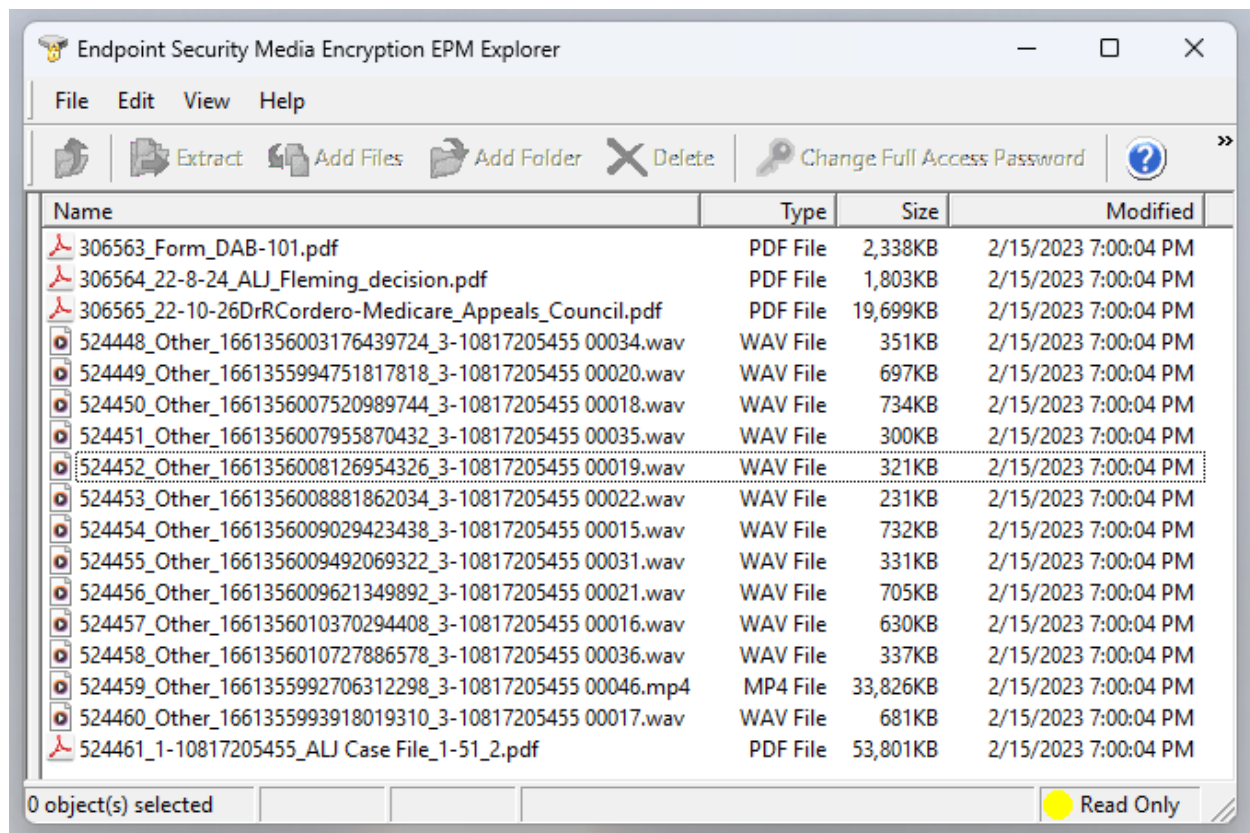
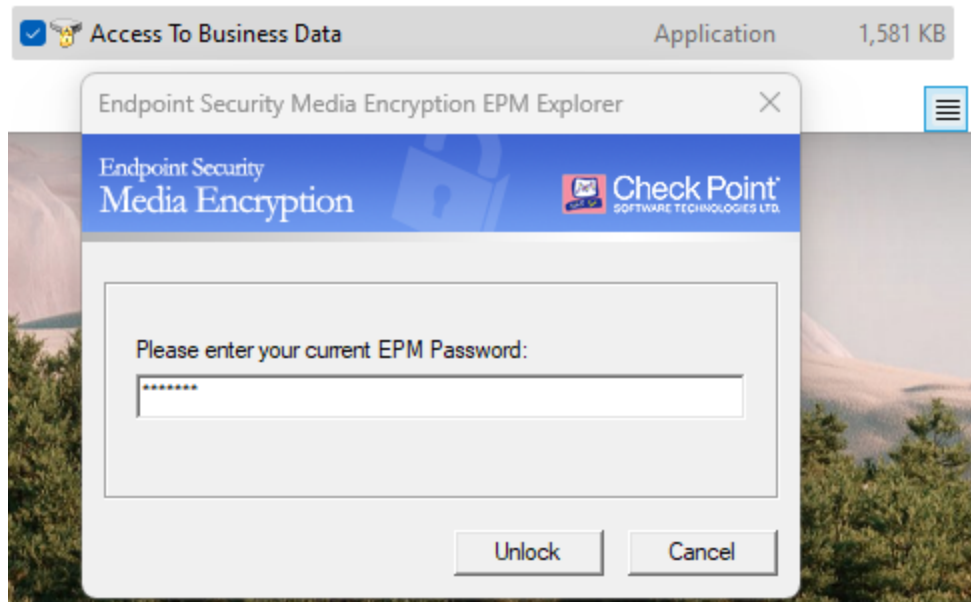
4. When attempting to open the first two files, these are the results:





2. The third folder has a pro forma number of files and excludes two-party phone recordings, revealing cherry-picking disingenuousness and bad faith

5. When clicking the third link, a dialog box opens, and the password that Mr. Eng provided on one of his February 15 letters must be used; then the third folder opens:



6. The contents of the above passworded folder show that Mr. Eng sent Dr. Cordero only four documents and 12 phone recordings. They represent a pro forma number out of the scores of documents generated and phone discussions conducted in, generally, this case, and, particularly, this appeal, involving officers at:

- a. the headquarters and field offices of the Office of Medicare Hearings and Appeals (OMHA)

- b. the Council
 - c. Medicare
 - d. the Department of Health and Human Services (HHS)
 - e. the HMO EmblemHealth (Emblem) and
 - f. Maximus Federal Services (Maximus).
7. Neither of the 12 phone recordings are of discussions between two parties: 11 are recordings of only messages that Dr. Cordero left on officers' answering machines; and one is of a message left by Inspector Cory Hogan of the Federal Protective Services of Homeland Security([¶48 below](#)).
8. Accordingly, those phone recordings exclude OMHA, Council, Medicare, and HHS officers, and other third parties, except for Inspector Hogan, so that they may not embarrass or incriminate themselves or each other or be impeached with their own words. That shows cherry-picking intentionality on the part of those who gathered or accepted the recordings, such as Mr. Eng.
9. The file titled "524459_Other_1661355992706312298_3-10817205455 00046" is a .mp4 audio file with no video. In the quotation in [¶1 above](#) from one of his February 15 letters, Mr. Eng states that "the administrative record" that he sent Dr. Cordero includes "the documentary exhibits and a recording" rather than '*the* recording' of the ALJ hearing held on August 8, 2022, before ALJ Loranzo Fleming (ALJ Fleming), the chief of the OMHA Atlanta Field Office (Atlanta Office).
10. That kind of reference begs the questions whether there are or were other versions of that hearing and, if so, where they are or were; why they were not sent to Dr. Cordero; and why the one sent was chosen to be sent on the CD.
11. The above demonstrates that the contents of the CD are a self-serving selected set of materials. For proof, there is the official "Index of the Administrative Record and Exhibit List" ([page 62 below](#)) that ALJ Fleming included in his "Notice of Decision"² of August 24, 2022.
12. Even ALJ Fleming's official "Index" is incomplete: It does not include anything that took place since ALJ Denis Yanohira (ALJ Yanohira) recused himself in mid-June 2022, thus opening the way for the transfer of the hearing request from the OMHA Phoenix, AZ, Field Office (Phoenix Office) to the Atlanta Office
13. Nor does it include the many phone discussions involving his Atlanta Office, the OMHA headquarters, and Dr. Cordero, and concerning, among other things:
- a. Dr. Cordero's request for evidentiary materials to prepare for the ALJ hearing that ALJ Fleming was to, and did, preside over on August 8;
 - b. holding Emblem and Maximus in default for failing to answer the May 22 Statement on Appeal³ of Dr. Cordero and positioning themselves to ambush him at the hearing with allegations and arguments never before made;
 - c. Dr. Cordero's request for the audio/video recording of the hearing to prepare his motion⁴ for ALJ Fleming to recuse himself or be disqualified; and

² <http://Judicial-Discipline-Reform.org/ALJ/22-8-24ALJFleming-DrRCordero.pdf>

³ http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf

⁴ http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_motion_recuse_ALJFleming.pdf

- d. ALJ Fleming’s refusal, stated by his legal assistant, Mr. Andre Rutledge, tel. (470)633-3424, to acknowledge receipt of Dr. Cordero’s August 17 motion for his recusal because it had been filed electronically instead of being printed and mailed. That was a pretext in defiance of the fact that OMHA offers the options of filing through its e-file system and by fax, and corresponds through email. The pretense requirement of yet another pretender!
14. Similarly, the “Index” must be updated to include all the documents produced and phone discussions alluded to by Legal Administrative Specialist US HHS OMHA James “Jim” Griepentrog (§58 below; Mr. Griepentrog) in his email of September 30⁵, where he referred to Dr. Cordero’s “repeated requests...for full discovery of relevant communications”(§107.b.3 below).
15. There is more to add to that “Index”: the many documents and phone discussions referenced in Dr. Cordero’s Brief on Appeal⁶ to the Council dated October 26, 2022.
16. This means that the update to the “Index” of August 24, 2022, must include all the evidentiary materials and phone discussions that have been generated in the more than six months since the “Index” was composed.
- a. Actually, it must cover well over the past eight months given that June 6 is the latest date bore by any File therein, i.e., File 36; and the last “Index” entry is the ALJ hearing, File 48, which took place on August 8.
17. Mr. Eng knew and should have known had he proceeded with due diligence that his CD of February 15, 2023, was not what Dr. Cordero had requested to prepare his appeal to the Council and include in the record of an eventual appeal to the Medicare Appeals Board (Board) and a federal district court. Its contents are patently incomplete. Given that “people are deemed to intend the foreseeable consequences of their actions”, Mr. Eng intended his withholding of what was requested to make his CD a vehicle of concealment of evidentiary materials.
18. Those who cherry-picked the evidentiary materials and phone recordings on the CD are agents of OMHA, the Council, Medicare, and HHS, who are their principals. Their pretense of sending Dr. Cordero that CD “*Pursuant to your request*” shows that they have conducted themselves disingenuously and in bad faith. Thereby they have rendered their principals liable due to their misconduct within the scope of their employment.

⁵ http://Judicial-Discipline-Reform.org/ALJ/DrRCordero_OMHA_Council_emails.pdf

⁶ http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf



Department of Health and Human Services
OFFICE OF MEDICARE HEARINGS AND APPEALS
Atlanta, GA

Appeal of: **R. CORDERO**

OMHA Appeal No.: **3-10817205455**

Enrollee: **R. CORDERO**

Medicare Part: **C**

Medicare No.: *******Q8WV67**

Before: **Loranzo Fleming**
Administrative Law Judge

Index of the Administrative Record and Exhibit List

Exhibit Record

**Administrative
File Reference**

	File Name	Page Range
All Documents: Appellant Voicemail: 05/11/2022	File 15	1 : 1
All Documents: Appellant Voicemail : 05/12/2022 0927	File 16	1 : 1
All Documents: Appellant Voicemail : 05/12/2022 416pm	File 17	1 : 1
All Documents: Appellant Voicemail: 05/13/2022	File 18	1 : 1
All Documents: Appellant Voicemail: 05/16/2022	File 19	1 : 1
All Documents: Appellant Voicemail: 05/23/2022	File 20	1 : 1
All Documents: Appellant Voicemail: 05/24/2022	File 21	1 : 1
All Documents: Appellant Voicemail: 05/31/2022	File 22	1 : 1
All Documents: Voicemail: 06/08/2022 1420	File 31	1 : 1
All Documents: Appellant Voicemail: 06/10/2022 0637	File 34	1 : 1
All Documents: Appellant Voicemail: 06/10/2022 1222pm	File 35	1 : 1
All Documents: Appellant Voicemail: 06/10/2022 240pm	File 36	1 : 1

Exhibit Record

**Administrative
File Reference**

	File Name	Page Range
Procedural - CMS Levels: Case File	File 1	1 : 63
Procedural - CMS Levels: EOC	File 2	1 : 816
Procedural - CMS Levels: QIC Acknowledgement Letter: R Cordero	File 3	1 : 2
Procedural - CMS Levels: QIC Acknowledgement Letter: MA Plan	File 4	1 : 2
Procedural - CMS Levels: QIC Decision	File 5	1 : 10
Procedural - CMS Levels: Req to ALJ	File 6	1 : 3
Procedural - CMS Levels: Case File for ALJ	File 7	1 : 896
Procedural - CMS Levels: Case File ACK to ALJ	File 8	1 : 3
Procedural - OMHA Level: Report of contact: 05/03/2022	File 10	1 : 1
Procedural - OMHA Level: Notice of Hearing	File 11	1 : 11
Procedural - OMHA Level: Report of contact	File 12	1 : 1
Procedural - OMHA Level: Request for ALJ Hearing: Supplemental	File 13	1 : 65
Procedural - OMHA Level: Report of Contact (5/11/22)	File 14	1 : 1

OMHA-156

Dated: 2022-08-24

Page 1 of 2

Index of the Administrative Record and Exhibit List

Procedural - OMHA Level: Appellant Correspondence: 1 of 2	File 23	1	: 35
Procedural - OMHA Level: Report of contact: 05/25/2022	File 24	1	: 1
Procedural - OMHA Level: Order Denying Request for ALJ Recusal	File 26	1	: 1
Procedural - OMHA Level: Appellant Correspondence: 2 of 2	File 27	1	: 28
Procedural - OMHA Level: Report of contact: 05/31/2022	File 28	1	: 1
Procedural - OMHA Level: Response to Notice of Hrg	File 29	1	: 4
Procedural - OMHA Level: Response to Notice of Hrg: Appellant	File 30	1	: 2
Procedural - OMHA Level: Report of contact: 06/08/2022	File 32	1	: 1
Procedural - OMHA Level: Report of contact: Email referenced in	File 33	1	: 3
Procedural - OMHA Level: Order of ALJ Withdrawal	File 37	1	: 1
Procedural - OMHA Level: Response to Notice of Hrg: With	File 38	1	: 5
Procedural - OMHA Level: Notice of Hearing	File 39	1	: 13
Procedural - OMHA Level: Report of contact	File 40	1	: 1
Procedural - OMHA Level: Report of contact	File 41	1	: 1
Procedural - OMHA Level: Report of contact	File 42	1	: 1
Procedural - OMHA Level: Notice of Hearing: Amended	File 43	1	: 22
Procedural - OMHA Level: Report of contact	File 44	1	: 1
Procedural - OMHA Level: Notice of Hearing	File 45	1	: 21
Procedural - OMHA Level: Response to Notice of Hrg	File 47	1	: 2
Procedural - OMHA Level: Party request: Motion to Recuse	File 48	1	: 36
Procedural - OMHA Level: Request for ALJ Hearing	File 9	1	: 3
Proceeding (Audios): Hearing Audio	File 46	1	: 1

Non-Exhibit Record

Administrative File Reference

	File Name	Page Range
Records not considered: Duplicate evidence	File 25	1 : 1

3. A “Report of Contact” on ex parte communications between the Phoenix Office and Emblem shows that they knew that Dr. Cordero’s appeal had been denied even before the ALJ hearing date had been set

19. File “524461_1-10817205455_ALJ Case File_1-51_2” is a dump for 2,087 pages with no index or table of contents and no master document referring to its pages. What kind of professional makes a record that way? Of what use is something like that for the administration of an office, let alone the administration of justice? It is a pretense of a record intended to deter anybody from reviewing it and thereby conceal embarrassing, incriminating, and impeaching materials.
20. By laboriously overcoming that intent, one reaches page 1898 on the file’s page thumbnail pane, File 14([Council:67 below](#)). It contains a “Report of Contact” between caller paralegal Luz Campos of HMO EmblemHealth and callee Deniese Elosh, Legal Assistant to ALJ Denis Yanohira in the Phoenix Office. In “Section 3: Provide a summary of contact”, Assistant Elosh reported the following:
- MA Plan to request information for reason of denial of appeal. QIC decision was sent, via fax, to contact.
21. About what appeal that had been denied was Emblem requesting information? Emblem could not possibly have been referring to the denial of Dr. Cordero’s claim that it had reconsidered only to affirm its own denial of it.
22. Thereafter, Emblem took the initiative on January 12, 2022, to submit its denial to Maximus Federal Services for a redetermination. By letter of February 15, 2022, Maximus informed Emblem, but not Dr. Cordero, that it had determined that Emblem’s reconsideration denial was correct because Medicare did not cover Dr. Cordero’s claim.
23. Three months later, Emblem would not have asked the Phoenix Office to inform it of Maximus’s reason for its redetermination in its favor. Emblem had been informed of it by Maximus itself.
24. The “denial of appeal” that Emblem could request to know the reason for could only have been Dr. Cordero’s appeal. But how could the Phoenix Office have denied Dr. Cordero’s appeal by May 11 before the date for the ALJ hearing had even been set, never mind the hearing held on August 8 in another OMHA field office, i.e., that in Atlanta, and a transferee ALJ, namely, ALJ Fleming, different from the originally assigned one, ALJ Yanohira, had issue his decision on August 24?
25. If the QIC (Qualified Independent Contractor) referred to is Maximus, how could it have been the one that had decided by May 11 whether Dr. Cordero’s appeal was to be upheld or denied, never mind the fact that Dr. Cordero did not file with the Phoenix Office and served on both Emblem and Maximus his Statement on Appeal^{3 above} until May 22?
26. Why was QIC Maximus allowed to submit its decision only to the Phoenix Office without being required to serve it on all the parties, including Dr. Cordero, although all parties are required to serve on the parties any paper that they file with an Office or the Council?
27. Maximus and the Phoenix Office engaged in an impermissible ex parte communication. Their engagement in it offends against due process and the requirements of transparency, equal treatment of all parties, impartiality, and the prohibition in Canon 2 of the Code of Conduct for United States Judges⁷ against “even the appearance of impropriety” by judges.

⁷ <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>

28. How did Emblem learn that the appeal had been denied and only was requesting the Phoenix Office to let it know the reason for it?
29. It is absolutely incontrovertible that the decision that the Phoenix Office faxed to Emblem was not the record that Maximus had filed with that Office without serving it on Dr. Cordero: It ran to 1,800 pages!
30. By Emblem requesting information and the Phoenix Office providing it without informing Dr. Cordero thereabout and providing it to him, they too engaged in an impermissible ex parte communication.
31. That May 11 “Report of Contact” reports on another contact:
- 05/24/2022: 8:15 AM MA Plan requested information for pertaining to this appeal: copy of the Case File was sent, via fax to contact.
32. What information about the appeal did Emblem request from the Phoenix Office and what “Case File” did the Office provide it, all in another ex parte communication?
33. What is the difference between an “Administrative Record” and a “Case File”, which is short enough to be faxed yet informative enough to warrant its ex parte request by one of the parties?
34. The Phoenix Office, Emblem, and Maximus coordinated explicitly or constructively a complicit agreement to decide the appeal and inform each other ex parte of the decision denying Dr. Cordero’s appeal. They participated in the process of setting up and holding the ALJ hearing pro forma: It was a pretense.
35. They knowingly and thus intentionally went through the motions to the detriment of Dr. Cordero, who was caused to waste his effort, time, money, and emotional energy in preparing and attending an ALJ hearing already decided against him.
36. By contrast, they reaped the benefit of knowing in advance their coordinated outcome of the hearing so that they could adjust their conduct accordingly. As a result:
- a. Emblem did not bother to answer Dr. Cordero’s Statement on Appeal^{3 above} when he filed and served it 10 days later on May 22: The appeal denial was a done deal. Emblem had no need to waste resources researching, writing, filing, and serving an answer.
 - b. Maximus did not bother either to answer his Statement or even attend the hearing.
37. Emblem and Maximus in coordination with the Phoenix Office and its principal, OMHA, committed fraud on Dr. Cordero.
38. What a scandal if it were exposed that the OMHA Phoenix Office, Maximus, and Emblem had coordinated the decision of an appeal before appellant had even filed his statement on appeal and a hearing had been held! Rather than holding a hearing, they staged the viewing of a travesty of justice. If so:
- a. How many other appeals have they decided through such ex parte coordination, thus committing fraud on the public?
 - b. Qui bono: Who else benefits therefrom?
 - c. Do other OMHA offices and their headquarters decide appeals that way?
 - d. Who else knows about such ex parte coordination of appeal decisions and how high are they

in the hierarchy of OMHA, Medicare, the Council, HHS,...and Homeland Security too?

39. Avoiding the scandal's individual and institutional dire civil and criminal consequences provides a reason for the coordinated complicit agreement to withhold from Dr. Cordero the evidentiary materials that he has requested from all those parties as well as Maximus and Emblem for more than a year. No wonder they withheld their phone discussions from the CD that Mr. Eng sent Dr. Cordero on February 15, 2023. They coordinated their concealment of evidentiary materials.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Medicare Hearings and Appeals

REPORT OF CONTACT

Instructions: If you have been contacted by or make contact with an individual or entity concerning an appeal that is currently pending before the Office of Medicare Hearings and Appeals (OMHA), complete this form to document the contact that occurred, and include the completed form in the administrative record for the appeal. Completion of this form is not required for contact that occurs via mail, fax, e-mail, or any other written form of communication that will be included in the administrative record and that identifies the sender and the date the communication was received. This form is also not required for contact made solely for the purpose of scheduling a hearing (unless documenting an objection or a request to change the time and place of a scheduled hearing), or for contact that occurs exclusively among OMHA employees or between OMHA employees and employees of other staff or operating divisions within the U.S. Department of Health and Human Services that were not involved in the current or prior adjudication of the appeal.

Section 1: What is the appeal information?

Appellant Name R CORDERO	OMHA Appeal Number 3-10817205455
OMHA Office Phoenix	Assigned Adjudicator (if any) Yanohira

Section 2: What is the contact information?

Date of Contact 05/11/2022	Time of Contact 2:30 PM
Method of Contact <input type="checkbox"/> In-Person <input checked="" type="checkbox"/> Telephone <input type="checkbox"/> Voicemail <input type="checkbox"/> Other (describe below)	
Contact Name LUZ CAMPOS	Title/Position
Firm or Organization (if applicable) EMBLEMHEALTH	Telephone Number (646) 447-7831

Section 3: Provide a summary of the contact.

MA Plan to request information for reason of denial of appeal. QIC decision was sent, via fax, to contact.

05/24/2022: 8:15 AM MA Plan requested information for pertaining to this appeal: copy of the Case File was sent, via fax to contact.

Section 4: What is the name of the OMHA representative completing the report of contact?

OMHA Representative Name (print legibly) Deniese Elish	Title/Position Legal Assistant
---	-----------------------------------

4. Pattern of withholding evidence needed for hearings, briefs, and the record on appeal to the Council, the Board, and a district court

a. Maximus and Emblem withheld the redetermination decision

40. What follows summarizes a more detailed account^{1, 2} that demonstrates that Mr. Eng's conduct is in line with a pattern of conduct intended to withhold evidentiary materials from Dr. Cordero. The latter needed those materials to support his claims to Emblem; prepare for the ALJ hearing; write his appeal to the Council; and make it part of the record of an eventual appeal to the Board and a federal district court.
41. Maximus never sent Dr. Cordero its decision dated February 15, 2022, supporting Emblem's reconsideration that denied his claim for medical services. He called Emblem to ask why he had not received Maximus's decision although he had received Maximus's letter dated January 21, 2022, informing him that it had been tasked by Emblem with redetermining Emblem's denial and letting him know that it would inform him of its decision.
42. Emblem admitted that it had received Maximus's redetermination affirming Emblem's denial. Dr. Cordero asked for a copy. Emblem agreed to send it to him but failed to do so. He had to request it again and insist that it be emailed to him while its representative, Grievance and Appeals Supervisor Sean Hillegass, tel. (646)447-0617, was on the phone with Dr. Cordero. Maximus and Emblem had coordinated their effort to make Dr. Cordero miss the deadline for requesting an ALJ hearing.

b. Maximus withheld from Dr. Cordero the record that it filed with the Phoenix Office

43. Maximus never sent Dr. Cordero a copy of the record that it filed with the OMHA Phoenix Office. Dr. Cordero found about it by accident upon asking questions of Deniese Elosh, Legal Assistant to ALJ Yanohira, when she called him on May 3, 2022, to set up the date of the ALJ hearing in the Phoenix Office.
44. At his repeated request, she sent him what she said constituted the record filed by Maximus: "about 100 pages". But he found out through a third-party, namely, Inspector Cory Hogan([¶48 below](#)), tel. (602)513-3689 of the Federal Protective Services of Homeland Security, that in fact Maximus had filed a record consisting of 1,800 pages!
45. Maximus intended to conceal embarrassing, incriminating, and impeaching evidence in an avalanche of irrelevant and extraneous digital paper with no index or table of contents: paper merely slapped together to carry out a cover-up. Maximus committed spoliation.
46. Many of those pages had never been even referred to, much less discussed, by any of the more than 15 Emblem supervisors^{6 above} who for the more than 8 months since September 8, 2021, when Dr. Cordero first called Emblem to make a claim for medical services, incompetently dealt with his claim. Irresponsibly, they passed him from one to the other.

c. The Phoenix Office endeavored to withhold Maximus's record

47. The ALJ hearing that Dr. Cordero requested in April 2022 was first assigned to ALJ Denis Yanohira in the Phoenix Office. The ALJ's Legal Assistant, Deniese Elosh, called Dr. Cordero on May 3 to set up the date for it. He asked her how there could be a hearing without the parties first

stating their position and having discovery. She blurted that Maximus Federal Services had filed “the record”. Dr. Cordero protested that Maximus had not served that “record” on him.

48. Dr. Cordero had to call Legal Assistant Elosh repeatedly to request that she send him a copy of that “record”. But she would neither pick up the phone nor respond to the messages that he recorded on her answering machine. Instead, she reacted by filing with the Federal Protective Services of Homeland Security a complaint against him for harassing and threatening her, as if Dr. Cordero were a terrorist! You can pass judgment on whether Dr. Cordero did that: listen to the phone recordings that Mr. Eng put on the CD that he sent Dr. Cordero on February 15, 2023.
49. It is quite difficult to imagine that Assistant Elosh took on her own initiative that step, most unwarranted and fraught with consequences, of complaining about Dr. Cordero to the Federal Protective Services. She had no personal reason to withhold ‘the record’ from him. This provides probable cause to believe that she acted on the instructions of her boss, ALJ Yanohira.
50. On May 17, 2022, Inspector Cory Hogan of the Federal Protective Services called Dr. Cordero to investigate the complaint of Legal Assistant Elosh. He must have found it so unfounded and abusive that it was he who caused her to send Dr. Cordero “the record” in its entirety on a CD: 1,800 pages!, as opposed to the ‘about 100 pages’ that she had told Dr. Cordero that ‘the record’ consisted of.
51. Dr. Cordero moved^{3 above} for ALJ Yanohira to recuse himself or be disqualified, for he, as principal, bore responsibility for the actions of his agent. Also, he asked in his motion for the hearing to be held at another OMHA field office because his colleagues in his own Office could be motivated by a complicit reciprocal protection agreement to teach Dr. Cordero the lesson: *Never mess with anyone of us judges and our assistants!*
52. That lesson was shockingly expressed by Then-Judge, Now-Justice Neil Gorsuch when he went to the U.S. Senate to pay courtesy visits to the senators who would vote on the confirmation of his nomination to the Supreme Court by President Trump. He was asked by journalists what he thought about the President’s disparaging reference to “the so-called judge of Mexican heritage”, namely, U.S. District Judge Gonzalo Curiel, who was presiding over the Trump University lawsuit and had issued rulings unfavorable to the President: His answer was:

An attack on one of our brothers and sisters of the robe is an attack on all of us.
53. That is the expression of judges’ gang mentality: ‘Right or wrong aint making no different what we do cause the only thing that matters is your one of us or em.’ That is how gang members speak and judges think.
54. ALJ Yanohira denied the motion. Dr. Cordero appealed to the Council on June 3, 2022⁸. It neither acknowledged receipt nor disposed of that appeal; but ALJ Yanohira withdrew his previous denial order and recused himself by means of an undated form rubberstamped with his name in print that Dr. Cordero received in the mail on or around June 22, 2022.
55. The ALJ hearing was transferred from the Phoenix to the Atlanta Office and assigned to the chief, ALJ Fleming. His disregard of due process and disrespect of Dr. Cordero during the hearing on August 8 manifested his bias against him. Hence, on August 17, Dr. Cordero moved^{4 above} for ALJ Fleming to recuse himself or be disqualified. The Judge did not even acknowledge receipt of that motion at any time, let alone dispose of it in his decision^{2 above} of August 24, which was unfavorable

⁸ http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare_Appeals_Council.pdf

to Dr. Cordero.

56. Was there any complicit agreement whether explicit or implicit between the Phoenix and Atlanta ALJs to ensure that ALJ Fleming would teach Dr. Cordero the lesson?
57. ALJ Fleming has every interest in withholding all phone recordings, or for that matter, any other evidentiary materials that may be used to disqualify him and/or vacate or reverse his decision, or that may provide the basis for Dr. Cordero to embarrass, incriminate, or impeach him or any fellow judge or their assistants wherever they may be.

d. The Council withheld the Griepentrog “Case File”

58. Dr. Cordero made countless phone calls in his effort to overcome the runaround that those withholding the requested evidentiary materials were giving him. During that effort, he happened to have phone discussions in September 2022 with:

Mr. James “Jim” Griepentrog
Legal Administrative Specialist
US Dept of Health and Human Services
Office of Medicare Hearings and Appeals
Arlington Field Office
Presidential Tower
2550 S Clark St, Suite 3001
Arlington, VA 22202-3926
866-231-3087 (Toll Free)
571-457-7200 (Main)
571-457-7262 (Desk Phone) “CU-04” or 571-457-7290 (JC)
703.603.1812 (FAX) “Attn Jim G or SLAS/Pool”
E-mail: james.griepentrog@hhs.gov

59. As a result, on September 30, 2022, Mr. Griepentrog sent Dr. Cordero an email^{5 above} bearing “Subject: Re Partial Case File Req Processed and Ready to Proceed” together with the UPS Tracking # 1ZA5361A0391799687.

60. Yet, the return of tracking that number stated:

"Shipper created a label, UPS has not received the package yet".

61. Therefore, Dr. Cordero made his request unambiguous in his email^{5 above} of October 4, 2022, to Ms. Erin Brown, Senior Legal Supervisor, and to Mr. Griepentrog, her supervisee, in paragraph:

5. Therefore, I hereby formally request that you, Ms. Brown, and you, Mr. Griepentrog, see to it that without further delay there are sent to me on a USB stick, otherwise, on a CD disc, a copy of:

- a. the recorded hearing on August 8 before ALJ Loranzo Fleming in the OMHA Atlanta Office;
- b. all communications concerning any person or issue in this case, including by email, voice mail, telephone conversation, letter, and “Report of contact” in person, between:

- 1) anybody in the OMHA Phoenix, AZ, Field Office (internal communications)

- 2) anybody in the OMHA Atlanta, GA, Field Office (internal communications)
- 3) anybody in the Phoenix Field Office and the Atlanta Field Office (external communications)
- 4) the Medicare Appeals Council, with which I already filed an appeal on June 3, 2022^[8 above], [from ALJ Yanohira's denial of Dr. Cordero's motion^{3 above} for his recusal or disqualification, of which the Council never even acknowledged receipt] and anybody in the Phoenix and Atlanta Offices; and/or EmblemHealth and Maximus;
- 5) anything else that a reasonable and honest person acting fairly and impartially and intent on abiding by the command "If in doubt, disclose", would consider directly or indirectly relevant to this appeal, whether relating to the key or the important issues mentioned hereabove or as background providing context to anybody or entity somehow related to this appeal.

62. Mr. Griepentrog's superiors must have realized that they first had to censor even his "Partial Case File" for embarrassing, incriminating, and impeaching contents. So, they prevented 'UPS from receiving the package' at all. They coordinated their withholding from Dr. Cordero of evidentiary materials that he needed to write his brief on appeal and that one of their own legal administrative specialists, Mr. Griepentrog, had found and was "Ready to Proceed" to mail to him.

63. Neither Legal Supervisor Brown, Mr. Griepentrog, nor anybody else ever answered that request for evidentiary materials. In fact, Supervisor Brown has never replied to the emails that Dr. Cordero has sent to her email address Erin.Brown@hhs.gov or returned the phone messages that he has recorded on her answering machine at tel. (216)462-4121. Supervisor Brown illustrates the unresponsiveness of an institution, OMHA/Medicare, that exudes the arrogance of power because neither the institution nor its officers are held accountable.

- a. If any discipline is ever imposed on an OMHA/Medicare officer but it is not made public, it is essentially ineffective because it neither sets an example with deterrent effect on other officers nor establishes a precedent that the public can invoke to assert its rights and rely on to trust that institution. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done"⁹.

64. In fact, on October 18, 2022, Dr. Cordero emailed^{5 above} the following to them as well as their colleagues:

Mr. John Colter
Supervisor of Legal Administrative Specialists [Mr. Griepentrog's immediate supervisor]

Ms. Leslie McDonald
Mr. Joe Morgan
Mr. Timothy West
Ms. Hillary Didona

⁹ *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923). Cf. "Justice must satisfy the appearance of justice", *Aetna Life Ins. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

Mr. Jon Dorman
and
Medicare and OMHA

...

Moreover, my repeated calls to the telephone numbers that you provided, i.e., "ARL FO SLAS, John Colter, at (571) 457-7290 for assistance, and "VA's front desk at (571) 457-7200", go directly to Mr. Colter's voicemail, and he does not return my calls. This means that my phone number is being monitored so that I can no longer reach the front desk and talk to somebody else there. Instead, my calls are sent automatically to Mr. Colter for them to be suppressed by him.

Erin Brown does not return my calls or reply to my emails.

65. Nobody replied. So, from October 21, Dr. Cordero began to resend that thread of emails^{5 above} daily.

66. On November 16, Dr. Cordero received a meaningless email from:

Ms. Andrenna Taylor Jones
Senior Attorney Advisor, Appeals Operations Branch
Appeals Policy and Operations Division, Headquarters
Office of Medicare Hearings and Appeals

Medicare.Appeals@hhs.gov [neither an email address in her name nor her phone number was provided]

with information about his appeal to the Council that she necessarily knew that he necessarily had, for he had timely e-filed his appeal and received docket # M-23-386. She too pretended that she and the Council were sending him a reply.

67. Dr. Cordero also received an intentionally belated and thus useless email from:

Mr. Jon Dorman
Director, Appeals Policy and Operations Division
Office of Medicare Hearings and Appeals

Medicare.Appeals@hhs.gov [neither an email address in his name nor his phone number was provided]

precisely on the last day, October 28, for Dr. Cordero to appeal to the Council from the ALJ decision^{2 above} of August 24, 2022. By that time, Dr. Cordero necessarily had had to write and file his brief on appeal without having had access to the evidentiary materials that he had been requesting for months. It was yet another pretense of a reply to him.

68. Then Mr. Eng sent Dr. Cordero an email^{5 above} on November 25, that was just as intentionally belated and useless as it was disingenuous, for in what conceivable way was Mr. Eng providing any "assistance" to which any more would be "additional" practically a month after Dr. Cordero had had to file his appeal to the Council? Mr. Eng wrote:

Your emails [in the thread^{5 above}] below appear to be addressing customer service issues with OMHA. I also see you have electronically filed a request for review with my office docketed under M-23-386. The status of your case can be checked anytime on our website:
https://dab.efile.hhs.gov/mod/appeals/public_status. Please let me know if I can be of additional assistance.

69. That was Mr. Eng's pretense of "assistance" and of offering "additional assistance": He wrote in his email^{5 above} to Dr. Cordero of December 8, as follows:

Just to clarify, are you requesting a copy of the record from the Departmental Appeals Board – Medicare Appeals Council (Council), regarding your pending appeal under Council Docket Number, M-23-386?

70. Mr. Eng was dragging out the process by asking a question for which there was no foundation: How could he possibly be unclear as to the request for evidentiary materials that Dr. Cordero had made in his:

- a. Statement on Appeal^{3 above}
- b. appeal to the Council^{8 above}
- c. Brief on Appeal^{6 above}
- d. request repeated in his email of October 4([¶]61 above) and
- e. email to Mr. Eng and Mr. Dorman et al. of November 29, where Dr. Cordero stated unambiguously his request for evidentiary materials:

10. Had you read my email, you would have learned that I requested a copy of what Mr. Griepentrog referred to as "the case file" of my appeal # 3-1081 7205 455, and you referred to as "the administrative record":

- a. before the hearing presided over by ALJ Loranzo Fleming of the OMHA Atlanta, GA, Field Office, held on August 8, 2022, via recorded video conference;
- b. at the hearing;
- c. between the hearing on August 8 and the decision of ALJ Fleming of August 24, which includes, among other things, the *Index of the Administrative Record and Exhibit List*;
- d. after the decision of August 24, in order to prepare my appeal to the Medicare Appeals Council; and
- e. in my brief on appeal to the Council, timely docketed as M-23-386, to prepare my appeal to the Medicare Appeals Board and a federal district court from any detriment that I may have sustained due to the spoliation of the record; and demand compensation once the nature, extent, and gravity of the spoliation and its impact on me can be determined.

11. Indeed, the first time I requested a copy of the record was on May 3, 2022. From the office in OMHA Phoenix, AZ, of ALJ Denis Yanohira, to whom my appeal was first assigned, his legal assistant Deniese Elosh called me to schedule the hearing there. As a result of my questions, I was shocked to learn that a record existed, although I had not been informed of its existence, never mind sent a copy of it.

12. In my [Statement on Appeal](#)^[3 above] of May 21, 2022, I requested a copy of the record thus:

Part II, §C. Action Requested

...

¶169. the ALJ send Dr. Cordero a copy of any and all documents, including all text, graphs, voice mail, photos, video, etc., that it has already received and may in future receive for this case from any entity, whether they have been or may be filed by a person, Qualified Independent Contractor Maximus Federal Services, HMO EmblemHealth, Medicare, Medicaid, the Human Resources Administration, etc.;

71. In the email to Mr. Eng of December 9, Dr. Cordero repeated his unambiguous request:

"D. Action requested

27. Therefore, I reiterate my request for:

- a. "a copy of the August 8 video hearing; all emails, mail, and recordings of conversations concerning Dr. Cordero directly as a party to this case or indirectly as a member of a class of people similarly situated and sent or received from September 8, 2021 [when the first event in this case occurred], to date";
- b. a copy of the contents on the *Index of the Administrative Record and Exhibit List*; and
- c. any other record, 'case file', or information that reasonable people with knowledge of the circumstances of this case would want to know in order to either defend their rights or discharge their duty to judicially apply the law to the facts, and determine the harm that the conduct of Emblem, Maximus, Medicare/OMHA and their officers, including you, etc., have caused and assess proper compensation. Here applies the principle, "If in doubt, disclose".

How long are you going to drag this out? Until after the Council decides my appeal?

Are you proceeding in bad faith?..."

72. Dr. Cordero has kept emailing daily his December 9 email and the rest of the thread of emails that had started with Mr. Griepentrog's email of September 30^{5 above}. There was no reply by anybody until Mr. Eng sent him an email on February 17 stating:

A copy of the record was mailed to you on February 15, 2023. Please let me know if I can be of additional assistance.

73. Mr. Eng's offer of "additional assistance" was nothing more than 'additional pretense' on his part:

74. Mr. Griepentrog showed a friendly attitude and willingness to help Dr. Cordero in long, informative phone discussions. So are the emails that he crafted for Dr. Cordero, which are at the bottom of the thread of emails. Cf. ¶107.0 below

75. This provides probable cause to believe that Mr. Griepentrog's "Partial Case File" would have contained numerous files as well as two-party phone recordings. It is probable that just as he was honest and cautious in describing it as "Partial", he was honest and transparent in making it "Ready to Proceed" without filtering its contents.

76. Dr. Cordero's daily emails^{5 above} for months requesting those files and more made Mr. Griepentrog's superiors accept the need to send something to pretend to be satisfying the request. So, Mr. Eng sent Dr. Cordero his CD of February 15, 2023, pretending that it contained "*the*

administrative record, including *the* documentary exhibits” [emphasis added]. It did not!

**5. The pretense of being interested in receiving
a Notice of Decision file that could be opened**

77. Mr. Eng wrote in his December 8 email^{5 above} thus:

Also, I noticed that you uploaded three files to this appeal through the Departmental Appeals Board Medicare Operations Division Electronic Filing System, but one of these files named “22-8-24_ALJ_Fleming_decision.pdf” does not open on our end. Would you like to re-submit a working copy of that file before ^{61 above} the complete record that is currently before the Council?

78. If it was the case that such file did not open, why did Mr. Eng not look up the copy of ALJ Fleming’s decision that had been transmitted to the Council? After all, Mr. Eng’s colleague Mr. Jon Dorman, the Director of the Appeals Policy and Operations Division, had stated in his October 28 email to Dr. Cordero thus:

[I]f you have appealed the OMHA decision to the Medicare Appeals Council (Council), the administrative record for your appeal would have subsequently been transmitted to the Council. A request for a copy of the administrative record can be made to the Council.

79. If with his Council left hand Mr. Eng cannot get his Council right hand to give it what it received from OMHA ALJ Fleming, why should an appellant trust that whatever it is that the Council has is complete and reliable rather than a pretense resulting from concealment of evidentiary materials?

80. Moreover, if upon Dr. Cordero’s filing of his appeal^{6 above} to the Council on October 28 the Council took the initiative of asking ALJ Fleming’s Atlanta Office to send it the administrative record of his case, why has the Council failed for more than four months to respond to the request of Dr. Cordero to send him a copy of at least that record?

81. If an OMHA ALJ office and a decision-writing ALJ need not fear a comparison by the appellant between what he received through a request for evidentiary materials and what that office and the ALJ sent the Council, they have every interest in sending the Council as small a record and as free of any embarrassing, incriminating, and impeaching materials as possible so as to deprive the Council of any materials that it could use to reverse the ALJ’s decision.

82. That is all the more likely when that ALJ is the chief of that office, which is ALJ Fleming’s position in the Atlanta Office. By such withholding of evidentiary materials, he and his office commit spoliation to ensure their unaccountability. Their bias and disregard for due process are riskless. They too can pretend whatever they want.

83. If the Council received from ALJ Fleming’s Atlanta Office “the administrative record” that Mr. Eng sent Dr. Cordero on a CD, then Mr. Eng and his Council colleagues cannot be so incompetent or naïve as to fail to find suspicious that the Fleming Office sent them only four documents; 12 phone recordings, all of them consisting of one person recording a message on an answering machine, never of two persons talking on the phone; 11 are messages recorded by Dr. Cordero and one by Inspector Cory Hogan of the Federal Protective Services of Homeland Security...

84. and not one of the calls involves a party in the Office of ALJ Fleming. The latter has a strong motive for withholding all calls and any other evidentiary materials, such as emails and “Reports

of Contact”, concerning this appeal from the Council and all the more so from Dr. Cordero. That is so whether the materials involve anybody or nobody in his office but show a reason for ALJ Fleming to be biased against Dr. Cordero. That would justify his disqualification by the Council, which Dr. Cordero requested in his Brief on Appeal^{6 above}.

85. Did Mr. Eng or his Council colleagues care to ask ALJ Fleming, his legal assistant, Andre Rutledge, tel. (470)633-3424, or any other person in his office where were the recordings of anybody replying to Dr. Cordero’s and Inspector Hogan’s recorded messages?
86. If they received the answer that there were no two-party recorded discussions, then they could reasonably have concluded that among OMHA and Medicare officers there was a coordinated complicit implicit or explicit agreement not to reply to Dr. Cordero’s messages or any other messages that could lead to the exposure of their bias and withholding of evidentiary materials.
87. If there were two-party recordings but they were not sent to Mr. Eng and the Council, then their reasonable conclusion would have been that an intentionally incomplete “administrative record” was sent to them.
88. Mr. Eng and the Council were duty-bound to investigate these serious circumstances, for they compromised the integrity of judicial process. Indeed, they entailed:
 - a. concealment of evidence
 - b. spoliation
 - c. dereliction of duty
 - d. obstruction of justice
 - e. abuse of power
 - f. submission of knowingly incomplete and false statements and documents with intent to mislead
 - g. self-interested performance of an official function
 - h. fraud; etc.
89. However, there is evidence that Mr. Eng would not have investigated anything: After he stated in his December 8 email^{5 above} to Dr. Cordero that “one of these files named “22-8-24_ALJ_Fleming_decision.pdf” does not open on our end”, Dr. Cordero replied the next day, December 9, with an email that had a copy of that file that opened attached to it. What is more, Dr. Cordero kept attaching that file to his daily emails to Mr. Eng and all the other email addressees in the To: box, to wit:

DABMODHotline@hhs.gov, Medicare.Appeals@hhs.gov, appeals@dab.efile.hhs.gov,
James.Griepentrog@hhs.gov, Erin.Brown@hhs.gov, erin.nugent@hhs.gov,
john.colter@hhs.gov, Sherese.Warren@hhs.gov, Kathy.Greene@hhs.gov,
Kathy.Hanford@hhs.gov, Jon.Dorman@hhs.gov, Alethia.Wimberly@hhs.gov,
leslie.mcdonald@hhs.gov, Hillary.Didona@hhs.gov, corderoric@yahoo.com,
OSOMHAHearingTechSupport@hhs.gov, Dr.Richard.Cordero_Esq@verizon.net,
Rajda.Nachampassak@hhs.gov, Dawn.Kos@hhs.gov,
90. Nonetheless, Mr. Eng did not even acknowledge receipt of Dr. Cordero’s emails, let alone of that file.

91. Did Mr. Eng ever notice that Dr. Cordero's October 26 Brief on Appeal^{6 above} to the Council states in the third bookmark in the bookmark pane "Notice of Decision; 24oct22 ↓ Decision of ALJ Loranzo Fleming; 24oct22"?
92. Did Mr. Eng point that out to the Council or did he leave the Council with the impression that Dr. Cordero had failed the requirement of submitting a copy of the Notice of Decision with his appeal?
93. Had Mr. Eng examined with due diligence and critical judgment what he had received from the Atlanta and Phoenix Offices, he would have realized that "the administrative record" that the Council had received from them was obviously and intentionally incomplete to conceal embarrassing, incriminating, and impeaching evidence. If so, he would not have pretended in his December 8 email(^{¶77 above}) to be in a position to "send you the complete record that is currently before the Council".
94. Since November 29, 2022, Dr. Cordero has been emailing his daily email^{5 above} under:

Subject: To David Eng, Jon Dorman, Andrenna Taylor Jones, et al. re:
Partial Case File Req Processed and Ready to Proceed to
Appellant Dr. Richard Cordero
95. By the time Mr. Eng wrote his February 15 letter to Dr. Cordero, he had received some 80 emails bearing his name in the Subject: box.
 - a. To them must be added all the emails forwarded to him by his colleagues who received those emails through the 16 email addresses in the To: box in Dr. Cordero's emails and who did not know what to do with them or had been instructed not to deal directly with Dr. Cordero, but rather to forward his emails to Mr. Eng, who in his emails and letters titles himself "Lead Attorney Advisor" and "Branch Chief, Program Operations".
 - b. Moreover, Mr. Eng had access to all of Dr. Cordero's emails sent since October 4 to generic email addresses, such as Medicare.Appeals@hhs.gov. However strange or as a means of ensuring his own unaccountability, he has not provided an email with his name as user, that is, before the @ symbol. He sends his emails "From: OS DAB MOD Hotline (HHS/DAB) DABMODHotline@hhs.gov".
96. It follows that Mr. Eng must have received hundreds of emails from his forwarding colleagues and from the several generic email addresses used by Dr. Cordero since October 4. They deal with the same subject of request for evidentiary materials, which Mr. Griepentrog identified in his first email of September 30 as "Partial Case File Req Processed and Ready to Proceed to Appellant Dr. Richard Cordero".
97. Consequently, it was the responsibility of Mr. Eng to make sure that what after months on end of Dr. Cordero's daily request he belatedly put on a CD and mailed to Dr. Cordero was in fact, as he wrote in his February 15 letter, "*Pursuant to your request,...*". But it was not. Mr. Eng only pretended that it was.
98. For proof, Mr. Eng sent Dr. Cordero on February 15, a CD that contains the "22-8-24_ALJ_Fleming_decision.pdf" file that Mr. Eng could not open, rather than Dr. Cordero's email-attached copy^{2 above} that does open. Which one has Mr. Eng made available to the Council?

6. The pretense of Mr. Eng and the “...Immediate...” and “...Hotline...” offices that they can assist with digital access problems

99. In one of his February 15 letters^{5 above}, Mr. Eng wrote:

If you encounter any difficulty with the enclosed CD, please contact us and we will try to assist you.

100. In his February 17 email, Mr. Eng informed Dr. Cordero about the mailed CD and how to submit a supplemental brief.

101. That same day, Dr. Cordero in turn informed Mr. Eng that he had received an email under the subject line “Re: MOD E-Filing System: Interim Correspondence/Order uploaded, Docket No. M-23-386”, but had encountered a difficulty accessing what had been uploaded.

102. In fact, Dr. Cordero informed Mr. Eng that the link provided in that email, i.e., <https://dab.efile.hhs.gov/mod/appeals/34006>, did not allow him to access that “Correspondence/Order” or anything else, not even his own account, the one that he had created to e-file his appeal to the Council on October 28, 2022^{6 above}. It was locked and Dr. Cordero was kept in a loop. Dr. Cordero attached to his email screenshots of the returns resulting from clicking that link. Mr. Eng received proof of Dr. Cordero’s difficulty. Yet, he provided no assistance.

103. Mr. Eng’s colleagues at OS DAB MOD Hotline (HHS/DAB), DABMODHotline@hhs.gov, replied on February 23 with a useless email that contained Dr. Cordero’s answers to his secret questions. But that did not solve the difficulty at all because that did not deal with the difficulty: The account was in a loop and locked.

104. Dr. Cordero contacted them about the locked status of his account. One can reasonably expect that the addressees of email accounts with user names such as OSDABImmediateOffice@hhs.gov and DABMODHotline@hhs.gov would reply with the promptness implied in the terms “Immediate” and “Hotline”, but one would be shocked by their failure to reply to date. They too belong to an unresponsive institution that only pretends to provide assistance just as it pretended to provide “the administrative record”.

C. Action requested

105. Mr. Eng did not engage in his pretense only as an individual. His pretense was in furtherance of a coordinated complicit agreement between him and other OMHA/Medicare, Council, and HHS officers with authority to instruct all the recipients of the emails and telephone calls of Dr. Cordero not to communicate with him directly but rather let Mr. Eng be the point man to do so.

106. Mr. Eng and those other officers have intentionally withheld from Dr. Cordero and the Council evidentiary materials requested daily for months. By so doing, they have engaged in spoliation consisting in coordinated concealment of evidence that obstructs justice.

107. Therefore, Dr. Cordero respectfully requests Mr. Eng and the Council to:

- a. in line with Mr. Eng’s letter to Dr. Cordero of February 15^{5 above}, defer any action on this appeal until 30 days, plus 5 if their communication with him is again by mail, after the requested evidentiary materials are sent to him;
- b. produce, and order the production of, the evidentiary materials requested previously and in this brief, e.g., in ¶¶61, 70, 71 above, including:

- 1) telephone discussions between Dr. Cordero and another party, and between any two or more other parties concerning, in particular, this appeal, and, in general, the case of which it is part and which involves Emblem, Maximus, OMHA, the Council, Medicare, HHS, and the Federal Protective Services of Homeland Security;
- 2) any and all versions of the audio and/or video recording of the August 8 ALJ hearing before ALJ Fleming; otherwise, a statement that the version of that recording on the CD sent by Mr. Eng to Dr. Cordero is the only version that has ever existed and is complete and free of any manipulation that added, deleted, or altered any part or aspect of it;
- 3) all evidentiary materials and information regarding all actions taken by any and all parties upon Mr. Griepentrog ‘passing along the concerns and sentiments’ that he referred to in his email of October 3, 2022, to Dr. Cordero -at the bottom of the thread of emails^{5above} - under the “Subject: Follow Up”, where he wrote:

I wanted to add that your concerns about your continued access to federal buildings following the Federal Protective Service complaint filed about your call(s) to OMHA’s Phoenix Field Office and your concerns and full discovery request for relevant communications regarding what type of potential communications between the two OMHA field offices [in Phoenix and Atlanta] and/or ALJ judges [e.g., ALJ Yanohira and ALJ Fleming] that were reviewing your dental claim appeal are also being shared with Atty. Erin Brown, pursuant to your repeated requests.

On 09/29/2022, over the phone, you repeatedly expressed to me that you were hoping to have a call from an OMHA manager, specifically from a manager that could speak to your concerns about what effects that the events that led to your case being recused by the Phoenix Field Office ALJ judge [Yanohira] and your appeal case’s transferal to a different venue [in Atlanta], and what effects of having a potential file with Homeland Security after an FPS complaint [by Deniese Elish, Legal Assistant to ALJ Yanohira] was investigated [by Inspector Cory Hogan, tel. (602)514-7130, in May 2022] might have upon your attempts to represent legal clients before a governmental agency or in a state or a federal court. **Your concerns and sentiments have been passed along and were not ignored**, Dr. Cordero. [emphasis added];

- c. apply and cause others to apply these two principles of evidentiary materials production, whose application is objective rather than subjective:
 - i. “If the applier or a third party acting as a reasonable disinterested party would be in doubt whether to produce or not, produce”, and
 - ii. “Everything is produced that an honest person intent on assessing impartially and fairly the merits of this case and this appeal would reasonably want to receive and review”;
- d. send all evidentiary materials and information to Dr. Cordero and make them part of this appeal’s record so that they may eventually be filed in an appeal to the Medicare Appeals Board and a district court;

- e. produce all phone discussions and evidentiary materials that directly or indirectly relate to the “Report of Contact” delt with in ¶¶19 above et seq.;
- f. hold on the basis of ‘the totality of circumstances’ that Emblem, Maximus, OMHA, Medicare, the Council, HHS, and/or its officers are running a racketeer influenced and corrupt organization within the meaning of the Racketeer Influence and Corrupt Organization Act¹⁰ and/or a corrupt enterprise within the meaning of the New York State Enterprise Corruption Law¹¹;
- g. disqualify ALJ Fleming and reverse his decision^{2 above} of August 24, 2022;
- h. hold that Emblem and Maximus, which never answered Dr. Cordero’s Statement on Appeal^{3 above} or the Brief on Appeal^{6 above}, and Maximus did not even attend the ALJ hearing on August 8, 2022, forfeited the opportunity to file any brief in this appeal, including any answer to this supplemental brief, which would be untimely and barred by laches;
- i. enter judgment by default against Emblem and Maximus;
- j. hold that OMHA, Medicare, the Council, HHS, and its officers have engaged in the denial of services owed to Dr. Cordero as a Medicare insured member by coordinating their sending his phone calls to voice mail and not returning his calls, and not allowing him to speak with their supervisors, who fail to call him back despite being supposed to do so within 48 hours;
- k. hold that OMHA, Medicare, the Council, and HHS, and their officers, including ALJs, are accountable and liable in their official and individual capacities to compensate Dr. Cordero;
- l. hold that Dr. Cordero is entitled to compensatory and punitive relief, including attorney’s fees, the amount of which can only be established after ascertaining the nature, extent, and gravity of the harm that those entities and officers have inflicted on him.¹²

¹⁰ http://Judicial-Discipline-Reform.org/docs/18usc1961_RICO.pdf

¹¹ NY Consolidated Laws, Penal Law-PEN §460; http://Judicial-Discipline-Reform.org/docs/DrRCordero_Enterprise_Corruption_NY_RICO_version.pdf

¹² 1. *Strickland v. U.S.*, No. 21-1346, is a federal case decided on April 26, 2022, by the U.S. Court of Appeals for the 4th Circuit. For the first time, a federal court held the federal judiciary and its officials suable. By so doing, it rejected the doctrine of judicial immunity that judges have conjured up in their self-serving interest in defiance of the tenets “Equal Justice Under Law” and “Nobody is Above the Law”. Hence, *Strickland* establishes a precedent for suits to recover damages from judges and the institutions for which they work.

2. On Wednesday, June 8, 2022, it was announced that 90 U.S. gymnasts have joined in a class action to sue the FBI for over \$1 billion for dereliction of duty, negligence, and malfeasance in its handling of their complaints against sexual predator Dr. Larry Nassar and the subsequent cover-up in which defendant FBI officers engaged.

<https://www.nytimes.com/2022/06/08/us/politics/nassar-fbi-lawsuits.html>

3. Alex Jones was ordered to pay \$1.4 billion to the Sandy Hook families affected by his defamatory statements and the emotional impact that he had on them.

4. Mr. Donald Trump is reported as having recently spent well over \$10 million in attorney’s fees.

D. Service List

108. Medicare Appeals Council, filed by fax to (202)565-0227 and by mail to the address stated in ¶1 above;
109. EmblemHealth:
- a. Carlos Manalansan, Deputy General Counsel, tel. (646)447-7837;
CManalansan@emblemhealth.com
 - b. Sean Hillegass, Grievance & Appeals Supervisor; tel. (646)447-0617;
SHillegass@EmblemHealth.com,
 - c. Melissa Cipolla, Grievance & Appeals Sr. Specialist, tel. (646)447-7026;
M_Cipolla@emblemhealth.com
 - d. Stefanie Macialek, Grievance & Appeals Specialist, tel. (646) 447-6109;
SDAmbrosio@EmblemHealth.com,
 - e. Shelly Bergstrom, Quality Risk Management, tel. (631)844-2691;
SBergstrom@emblemhealth.com
110. Maximus Federal Services, tel. (585) 348-3300; toll-free (844)559-6743; fax: (585) 425-5292;
medicareappeal@maximus.com
111. The bloc of email addressees at ¶89 above.

E. Verification

112. I, Dr. Richard Cordero, Esq., declare pursuant to 28 U.S.C. §1746 and under penalty of perjury that to the best of my knowledge the foregoing statements are true and correct.

Executed on March 11, 2023
Bronx, New York

Dr. Richard Cordero, Esq.
Dr. Richard Cordero, Esq.
Dr.Richard.Cordero_Esq@verizon.net,
CorderoRic@yahoo.com
2165 Bruckner Blvd.
Bronx, NY 10472-6506
tel. 1(718)827-9521

F. Table of Exhibits¹³

113. The two letters of 15 February 2023, of Council Branch Chief David Eng to
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115. The emails to and from OMHA, Medicare, the Council, HHS, and Dr. Cordero.....87

¹³ http://Judicial-Discipline-Reform.org/ALJ/DrRCordero_OMHA_Council_emails.pdf

Exhibits

21feb23



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Departmental Appeals Board, MS 6127
Medicare Appeals Council
330 Independence Avenue
Cohen Building, Room G-644
Washington, DC 20201
(202)565-0100/Toll Free: 1-866-365-8204

Date: February 15, 2023

ALJ Appeal Number: 3-10817205455

Docket Number: M-23-386

Dr. Richard Cordero Esq.
2165 Bruckner Blvd
Bronx, NY 10472-6506

Dear Dr. Cordero, Esq.:

We have mailed you a copy of the administrative record for this case. The record is on an encrypted CD and the password to open the CD is: **Corder2?**

The letter accompanying the CD provides additional instructions for opening and accessing the files on the CD.

Sincerely,

/s/ David Eng

David Eng
Branch Chief, Program Operations
202-565-0100

21 Feb 23



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Departmental Appeals Board, MS 6127
Medicare Appeals Council
330 Independence Avenue
Cohen Building, Room G-644
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(202)565-0100/Toll Free: 1-866-365-8204

Date: February 15, 2023

ALJ Appeal Number: 3-10817205455

Docket Number: M-23-386

Dr. Richard Cordero Esq.
2165 Bruckner Blvd
Bronx, NY 10472-6506

Dear Dr. Cordero.:

Pursuant to your request, enclosed please find a compact disc (CD) containing a copy of the administrative record, including the documentary exhibits and a recording of the ALJ hearing. For privacy, the files on the CD are encrypted, and will open on a computer with a password that we will send to you by separate letter. Once you receive the password, you can open the CD by:

- Inserting the CD into your computer's CD drive;
- Locating the files on the CD by accessing your CD/DVD drive folder;
- Clicking on the files, and when prompted, entering the password sent to you in the separate letter.

The hearing recording may be playable on your computer's media player. It may also be playable on TheRecordPlayer, available free at <http://www.fortherecord.com>. If you encounter any difficulty with the enclosed CD, please contact us and we will try to assist you.

The Council also grants you an extension of time to review the record and submit a supplemental brief. The Council will defer action for a period of 30 days from the date of this letter.

You may send your submissions to the above address or by fax to 202-565-0227. Please provide copies of your submissions to all other parties and their representatives, if any.

If nothing further is received within the next 30 days, the Council may act on the request for review based on the present record.

Sincerely,

/s/ David Eng

David Eng

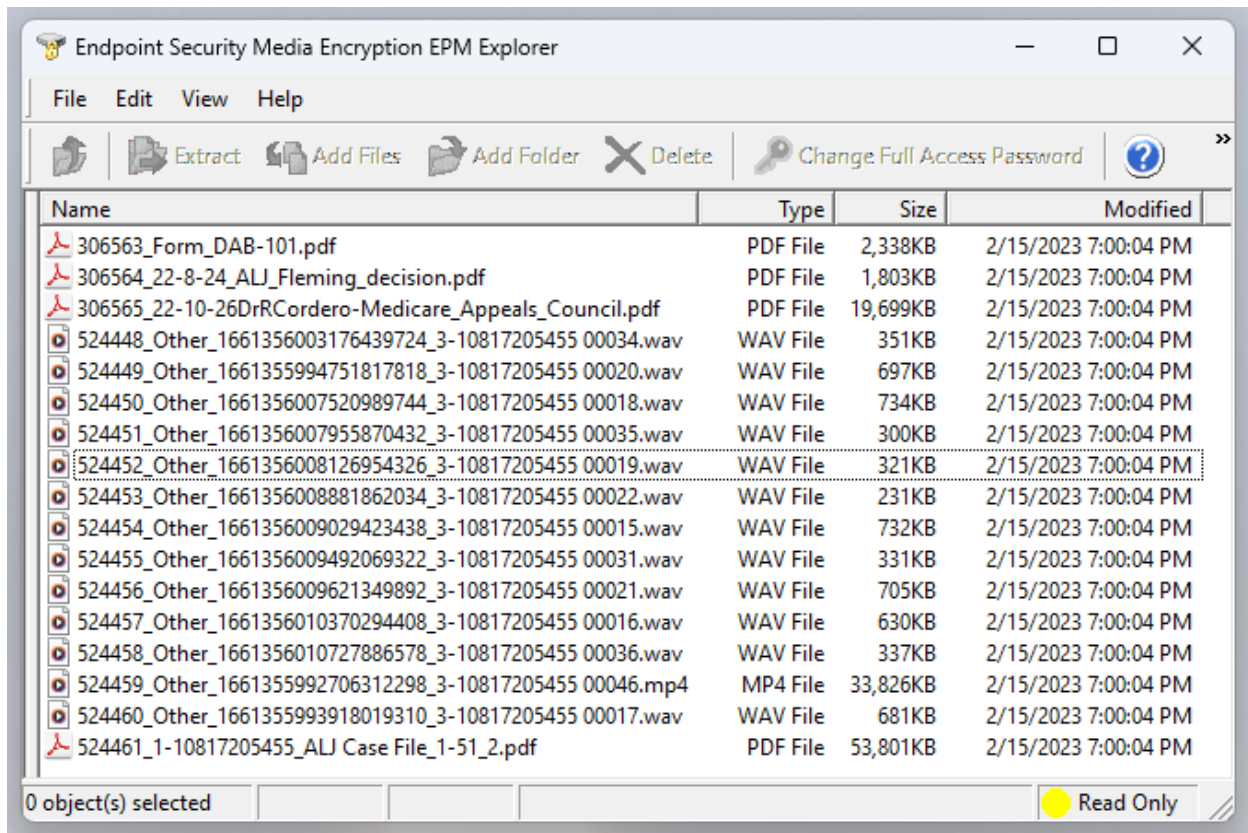
Branch Chief, Program Operations

202-565-0100

Enclosure for Addressee Only

cc: Health Insurance Plan Of Greater New York

114. Links to the contents of the CD that Mr. Eng sent Dr. Cordero on 15 February 2023



- a. http://Judicial-Discipline-Reform.org/ALJ_CD/306563_Form_DAB-101.pdf
- b. http://Judicial-Discipline-Reform.org/ALJ_CD/306564_22-8-24_ALJ_Fleming_decision.pdf
Cf. File that opens: <http://Judicial-Discipline-Reform.org/ALJ/22-8-24ALJLFleming-DrRCordero.pdf>
- c. http://Judicial-Discipline-Reform.org/ALJ_CD/306565_22-10-26DrRCordero-Medicare_Appeals_Council.pdf [Brief on Appeal 26oct22]
- d. http://Judicial-Discipline-Reform.org/ALJ_CD/524448_Other_1661356003176439724_3-1081720545500034.wav
- e. http://Judicial-Discipline-Reform.org/ALJ_CD/524449_Other_1661355994751817818_3-1081720545500020.wav
- f. http://Judicial-Discipline-Reform.org/ALJ_CD/524450_Other_1661356007520989744_3-1081720545500018.wav
- g. http://Judicial-Discipline-Reform.org/ALJ_CD/524450_Other_1661356007520989744_3-1081720545500018.wav
- h. http://Judicial-Discipline-Reform.org/ALJ_CD/524453_Other_1661356008881862034_3-1081720545500022.wav
- i. http://Judicial-Discipline-Reform.org/ALJ_CD/524454_Other_1661356009029423438_3-1081720545500015.wav
- j. http://Judicial-Discipline-Reform.org/ALJ_CD/524455_Other_1661356009492069322_3-1081720545500031.wav

1081720545500031.wav

- k. http://Judicial-Discipline-Reform.org/ALJ_CD/524456_Other_1661356009621349892_3-1081720545500021.wav
- l. http://Judicial-Discipline-Reform.org/ALJ_CD/524457_Other_1661356010370294408_3-1081720545500016.wav
- m. http://Judicial-Discipline-Reform.org/ALJ_CD/524458_Other_1661356010727886578_3-1081720545500036.wav
- n. http://Judicial-Discipline-Reform.org/ALJ_CD/524460_Other_1661355993918019310_3-1081720545500017.wav
- o. http://Judicial-Discipline-Reform.org/ALJ_CD/524461_1-10817205455_ALJCaseFile_1-51_2.pdf
- p. http://Judicial-Discipline-Reform.org/ALJ_CD/FPSInsCoryHogan524452_Other_1661356008126954326_3-1081720545500019.wav
- q. http://Judicial-Discipline-Reform.org/ALJ_CD/524459_Other_1661355992706312298_3-1081720545500046.mp4 [ALJ hearing on 8aug22]

115. The emails to and from OMHA, Medicare, the Council, HHS, and Dr. Cordero are in the file at:

http://Judicial-Discipline-Reform.org/ALJ/DrRCordero_OMHA_Council_emails.pdf

End Page